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In re Application of	:	
SCHULTE	:	DECISION ON
Application No.: 09/601,280	:	
PCT No.: PCT/EP98/06930	:	PETITION
Int. Filing Date: 02 November 1998	:	
Priority Date: 22 September 1998	:	UNDER 37 CFR 1.181
Attorney's Docket No.: 40098	:	
For: FLOOR CARPET INSTALLING SYSTEM	:	

This application is before the PCT Legal Staff for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 02 November 1998, applicant filed international application PCT/EP98/06930, which claimed priority of an earlier international application filed 22 September 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 March 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 08 July 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 22 March 2001.

On 31 July 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a executed declaration as required by 35 U.S.C. 371(c)(4); a purported translation of the annexes to the IPER and a preliminary amendment.

On 11 September 2001, the United States Designated/Elected Office mailed a Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 102(e) date of 31 July 2000.

The application has received a final rejection and applicant has filed a notice of appeal and brief in the file. On 24 September 2004, applicant filed a petition under 35 U.S.C. 181 for entry of a substitute specification. Applicant's petition is being held in abeyance pending the outcome of the following matter.

DISCUSSION

A review of the international application reveals that a translation of the international application as required by 35 U.S.C. 371(c)(2) was not filed. It is noted that the published international application has 10 claims and the brief description of the drawings list 3 figures. None of the purported translations filed contains a claim set containing claims 1-10. Nor do any of the purported translations of the description have a brief description of the drawings 1-3, other than a marked-up specification filed on 31 July 2000. However these sheets are indicated as having been modified. In the petition filed 24 September 2004, applicant states (pg 2) that he filed translations of both the international application and the annexes. However, it is noted that the transmittal letter of 31 July 2000 does not indicate that a translation of the international application was filed. Furthermore, it does not appear that applicant later filed an English translation of the international application. It appears that what applicant filed, may have been a translation of the international application with the amendments made during international preliminary examination (Chapter II) proceedings during the international stage of the application. This is not proper under 37 CFR 1.495, which requires that a translation of the international application and a separate translation of the annexes to the international application be filed.

If applicant has a post card showing that he filed a translation of the international application, he could submit the postcard and copy of translation and a statement from the attorney that these are true copies and what was filed.

CONCLUSION

The Notification of Acceptance mailed on 11 September 2001 is hereby VACATED.

Applicant is required to file an English translation of the international application as required by 35 U.S.C. 371(c)(2) and the processing fee for filing the English translation of the international application later than 30 months from the priority date as required by 37 CFR 1.492(f).

Applicant has TWO (2) MONTHS from the mail date of this decision to file the translation and processing fee. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to comply will result in abandonment of the application.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.

A handwritten signature in black ink, appearing to read "Leonard E. Smith". The signature is fluid and cursive, with the first name "Leonard" being more prominent than the last name "Smith".

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